

Get in on the Act

Scrap Metal Dealers Act 2013



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Background

Increases in metal theft driven by the rise in commodity prices have had a wide ranging impact, and cost the economy between £220 million and £777 million a year according to two recent estimates. It has seen disruption to energy supplies, transport and telecommunications, as well as manhole covers stolen and war memorials desecrated. It has also highlighted how ineffective the regulation of scrap metal dealers dating from the 1960s has become.

The Government therefore produced a hand-out Bill setting out proposals for a new licensing regime for scrap metal dealers in 2012, following its omission from the Queen's Speech. This was taken up by Richard Ottaway MP and extends to England and Wales.

Richard Ottaway said that the Bill would "provide the strong legislative framework so desperately needed to empower our local councils and police forces in their fight against offenders who wilfully plunder this country of metal, whilst also strengthening and supporting legitimate scrap metal dealers".

In summary the new Act repeals the Scrap Metal Dealers Act 1964 and Part 1 of Vehicles (Crime) Act 2001 and brings forward a revised regulatory regime for the scrap metal dealing and vehicle dismantling industries.

The Act maintains local authorities as the principal regulator of these industries. It gives local authorities the power to better regulate these industries by providing a power to refuse to grant a licence and revoke licences if the dealer is considered 'unsuitable'.

Unsuitability will be based on a number of factors including any relevant criminal convictions. The Act will also provide local authorities and police officers with suitable powers of entry and inspection.

The Home Office currently plan for the measures to commence in October, but this is dependent on the national register of scrap metal dealers being established by the Environment Agency.

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Key features of the Bill

These include:

- requiring all individuals and businesses to complete an enhanced application process to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants
- giving local authorities the power to revoke a licence
- requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer
- extending the offence of buying metal with cash to itinerant metal collectors
- new powers for the police and local authorities to enter and inspect sites
- creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers
- widening the definition of a scrap metal dealer to include motor salvage operators.

Key provisions explained

Section 1 makes it a requirement for a scrap metal dealer to have a licence in order to carry on in business as a dealer. It is an offence to carry on business without obtaining a licence, and anyone convicted can be fined at level 5 on the standard scale, which will mean the fine could be unlimited when changes in the Legal Aid, Sentencing and Punishment of Offenders Act comes into force later this year.

Section 2 creates two different types of scrap metal licence. One is a site licence, the other a collector's licence. Collectors' licences cover dealers who do not have a site and regularly collect through door-to-door collections. A site licence allows the dealer to carry on business at any sites in the councils' area listed on the licence, while the collector's licence allows a dealer to carry on business in a councils' area.

Licences will be issued by the local authority in which a site is situated or the area a collector operates. Local authority is defined in Section 22 as a district council, the City of London or a London borough in England and county council or county borough council in Wales.

Site licences allow the dealer to operate from the sites named in the licence. The licence will also have to name the site manager at each of the sites and the date on which the licence will expire. Collector's licences only have to name the dealer and the local authority area they can operate in. A collector's licence will not allow a dealer to operate in any other local authority area, so a separate licence will have to be obtained from each council in which the dealer wants to operate. Both licences will have to be in a form which allows the dealer to display it, in line with the requirements in Section 10.

Section 3 requires councils to be satisfied an applicant is a suitable person to operate as a dealer before they issue a licence. In deciding if someone is suitable the local authority can consider any information it considers relevant, including whether the dealer or their site manager has been convicted of a relevant offence or relevant enforcement action has been taken against them, and whether they have been refused a licence or environmental permit.

To determine this, a council can consult other local authorities, the Environment Agency or Natural Resources Wales, or the police. Whether an offence or enforcement action is relevant will be decided by the Secretary of State, who can make regulations, and can also issue guidance on determining if an applicant is suitable.

This section also allows councils to add conditions to the licence where the dealer or any of their site managers has been convicted of a relevant offence. These conditions are to limit the dealer to receiving any metal within the hours of 9.00am to 5.00pm, and that any scrap metal must be kept in the form in which it is received for a specific period of time not exceeding 72 hours.

Section 4 allows for licences to be revoked. Councils have discretion to revoke licences where it is satisfied the dealer no longer carries on business at any of the sites listed in the licence, or where it is no longer satisfied the dealer is a suitable person to be a scrap metal dealer. This section also allows the local authority to vary a licence to impose the conditions set out in Section 3 following the conviction of the dealer or a site manager for a relevant offence, or pending a hearing to appeal a decision to revoke the licence.

Section 5 gives effect to Schedule 1, which sets out the procedure for issuing licences. Licences will last for three years unless revoked, although the Secretary of State has the power to vary the length of the licence period.

Paragraph 2 sets out what information must accompany an application. This includes the full name, date of birth and usual place of residence for an individual applicant, the trading name, the addresses of sites in other local authority areas they run, details of any relevant environmental permits they hold, the details of any other scrap metal dealer licences issued to them in the previous three years, and the details of any relevant convictions or enforcement actions against the dealer.

Schedule 1 also allows councils to vary licences where there is a change of circumstance relating to details in the licence, although the licence cannot be transferred from one person to another. One type of licence can also be changed to the other, so a site licence can be changed to a collector's licence. Failure to apply for a variation in the licence when the details in it change is an offence punishable by a fine not exceeding level 3.

Paragraph 4 allows councils to request further information from the applicant when considering an application, while paragraph 5 makes it an offence to make a false statement when applying for a licence or providing additional material. Again the offence is punishable by a fine not exceeding level 3.

Paragraph 6 allows local authorities to charge a licence fee, which is set locally. In setting the fee, local authorities have to have regard to any guidance issued by the Secretary of State.

Paragraphs 7, 8 and 9 set out how an applicant can make representations where the local authority proposes to refuse, revoke or vary a licence. They also specify what notice a local authority has to give when it refuses an application, or revokes or varies it. This includes having to set out reasons for the decision. The right of appeal against the local authority's decision to refuse a licence application or to revoke a licence is to the magistrates' court.

Section 6 requires local authorities to supply any information related to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, Natural Resources Wales, and the police.

Section 7 establishes a national register of scrap metal licences, which will be maintained by the Environment Agency and Natural Resources Wales. The register will record the name of the local authority issuing the licence, the name of the dealer, their trading name, the address of any sites identified on the licence, the type of licence and when it will expire.

Section 8 imposes an obligation on the dealer to notify the local authority of any material changes in the information they have supplied in support of an application, if they have changed their trading name, and if they have ceased to trade in that authority's area. The local authority is then required to notify the Environment Agency or Natural Resources Wales of any changes that need to be made to the register, and of any changes that materially affect the accuracy of any information provided in connection with the application. Failure to notify the local authority is an offence punishable by a fine not exceeding level 3.

Section 9 gives effect to Schedule 2, which deals with the closure of unlicensed sites. The powers are based on the powers to close unlicensed alcohol sellers under the Criminal Justice and Police Act 2001.

The powers in Schedule 2 can only be exercised by a local authority over premises in its area.

Paragraph 2 allows a police officer or local authority to issue a closure notice on a non-residential premises being used as an unlicensed scrap metal dealer's site. The closure notice has to be given to the site manager and any other person who appears to be a director or manager of the business or anyone who occupies another part of any building or structure, and can also give it to anyone with an interest in the premises. A police officer or the council can cancel a closure notice through a cancellation notice.

Having issued a closure notice, paragraph 4 allows the police or the council to apply to a magistrate for a closure order. An order cannot be applied for until a week after the closure notice was made or once more than six months have passed from the date when the notice was given. An application cannot be made to a magistrates' court if the premises are not being used by a dealer in the course of their business and there is no reasonable likelihood that there will be in the future.

Paragraph 5 allows a magistrates' court to make a closure order where it is satisfied that a closure notice has been given and the premises continues to be used as a dealer's site or there is a reasonable likelihood it will in the future. The closure order can require the site to be immediately closed, for the dealer to immediately stop using it in the course of their business, or for a sum to be retained by the court until requirements imposed by the court are met.

Paragraph 6 allows the police or the local authority to terminate the closure order if they are satisfied the need for it has ended. An application can also be made to the court to discharge a closure order, but the court can only make it if it is satisfied there is no longer a need for the closure order.

An appeal can be made to the Crown Court against the making of a closure order and a discharge order, as well as decisions not to grant a closure or discharge order.

Paragraph 9 deals with enforcement of closure orders. Failing to comply with a closure order is an offence, and a police officer or authorised person can (using force if necessary) enter a premises and do anything reasonably necessary to ensure compliance with the closure order. It is also an offence to obstruct a police officer or authorised person in exercising their powers under this paragraph. Both this offence and failing to comply with a closure order are punishable by a fine not exceeding level 5.

Section 10 requires dealers to display copies of their licence at each site in a prominent place where the public can see it, while a mobile collector has to display a copy of their licence in any vehicle they use in the course of their business so that it can be easily read by a person outside the vehicle. A dealer commits an offence if they fail to comply with this requirement, the punishment being a fine not exceeding level 5.

Section 11 places a duty on a dealer, site managers and employees with delegated responsibility to verify the full name and address of anyone they receive scrap metal from. This has to be done by checking documents, data or other information from a reliable and independent source. Failure to verify names and addresses is an offence, as is giving a false name and address to a dealer. Both offences are punishable by a fine not exceeding level 3. Dealers or site managers have a defence if they have made arrangements for names and addresses to be verified and have taken all reasonable steps to ensure those arrangements have been complied with.

Section 12 makes it an offence for a dealer to pay cash for scrap metal. The only authorised means of paying for scrap metal are a non-transferable cheque or an electronic transfer of funds, although the Secretary of State can allow other methods of payment. Paying for scrap metal in breach of these requirements is punishable by a fine not exceeding level 5. Unlike the provisions inserted into the Scrap Metal Dealers Act 1964 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, mobile collectors are not exempt from this requirement.

Sections 13 and 14 mean that dealers have to keep a record of any scrap metal received or disposed of in the course of their business. For metal received the dealer has to keep the details of the date and time it is received, the registration number of any vehicle it was brought in and the name and address of anyone who brought it in. Dealers also have to keep copies of any documents they have used to verify the name and address of someone they have received metal from, and the cheque or receipt given when the metal is paid for.

Where metal is disposed of, the dealer must keep a record of its description, the date and time of its disposal, and the name and address of any person it is sold to.

Section 15 provides further details on the record keeping requirements and makes failure to comply with the provisions under sections 13 and 14 an offence punishable by a fine not exceeding level 5. A dealer or site manager has a defence if they have made arrangements for the requirements in sections 13 and 14 to be met and have taken all reasonable steps to ensure those arrangements have been complied with.

Section 16 gives police officers and local authority officers the right to enter and inspect a licensed site at any reasonable time provided they have given notice. Where giving notice would prevent the police or local authority officer checking the legislation has been complied with, or they have tried to give notice but have failed, then they can still enter the site. These rights do not extend to any residential premises however, and neither can force be used to gain entry.

Where needed, a warrant allowing the use of force to gain entry can be obtained from a magistrate; anyone obstructing an officer's right of entry or inspection or failing to produce a record is guilty of an offence, which can be punished by a fine not exceeding level 3. Police and local authority officers can also inspect any scrap metal or records.

Section 17 means that as well as any 'body corporate' being liable under any offences in the Act, a director or manager is also guilty of an offence if it is proved the offence has been committed with their consent or connivance.

Section 18 places a duty on the Secretary of State to review the Act within 5 years of section 1 coming into force. A report has to be published as part of this review, setting out whether the objectives of the Act have been achieved and whether it is appropriate to retain the Act.

Sections 19 and 20 make the necessary amendments to other legislation and set out how orders and regulations under the Act should be made.

Sections 21 and 22 sets out some key definitions such as what carrying on business as a scrap metal dealer is, what carrying on business as a motor salvage operator is, what scrap metal is defined as, what a mobile collector is and what a trading name is.

Section 23 sets out the commencement provisions.

Implications for local government

The Act completely replaces the previous registration scheme local authorities operated for scrap metal dealers. Local government will now be responsible for the licensing of scrap metal dealers and enforcement of the licensing regime alongside the police.

Councils will have to make provision for the issuing of scrap metal dealers' licences. The easiest way of doing this would be for existing licensing departments in councils to add the responsibility of scrap metal licensing to their responsibilities for alcohol, taxi and gambling licensing. For the majority of councils this should not add substantially to the existing workload of their licensing teams, as many areas will only have a handful of scrap metal dealers to license.

In introducing this new licensing regime councils will have to put in place appropriate procedures for considering applications and deciding whether an applicant is a suitable person to carry on business as a scrap metal dealer. No method of deciding licensing applications is set out in the Act, so councils will have to decide which applications (if any) should be considered by their licensing committee(s). Given the rights to make representations where a licence application is going to be refused, revoked or varied, it would be appropriate for applications where officers recommend refusal, as well as cases where revocation or variation of the licence is being considered, to be heard by members.

Suitable application forms will have to be prepared to capture the information required in Schedule 1 paragraph 2 of the Act as well as procedures for licence holders to notify the council of variations in the licence under section 8.

In addition councils will have to have procedures for ensuring that any licences issued are placed on the national register of licences maintained by the Environment Agency or Natural Resources Wales. As local authorities will be able to charge fees for the issuing of licences, councils will also have to decide what fees they are going to set, having had regard to the guidance produced by the Home Office.

Councils will also have to consider how they will enforce the provisions in the legislation. In particular any officers engaged in enforcement will need to be aware of the requirements on dealers to keep records of who they have bought metal from, metal they have received and disposed of, along with the cashless transaction provisions. They will also need to understand the rights they have to enter licensed and unlicensed sites, and the procedure for making a closure order.

The role of the LGA and local government in influencing the legislation

The LGA worked hard with other industry stakeholders to first persuade the Government of the need to legislate on this issue, and then to ensure the Bill's safe passage through both Houses of Parliament.

As the Bill progressed we briefed our Vice Presidents, as well as other interested MPs and Peers, in person and in writing. They then raised our concerns in both Houses and spoke on our behalf. We also used our survey results of local councils to emphasise the seriousness of the situation prior to this legislation, demonstrating that metal theft has affected almost nine in ten councils.

We raised issues within the committee stage debate in the House of Commons around local licensing conditions and fees; whilst reinforcing at each stage the strong cross party support within the LGA for the legislation. The Bill looked likely to fail during Commons committee stage but our support and hard work, alongside that of other stakeholders, ensured its progression and eventual Royal Assent.

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